IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

***CWP No. 876* of 2005**

Judgment reserved on : 12.9.2007

Date of Decision : October 24, 2007

Surat Singh …Petitioner.

Versus:

F.C. (Appeals) and another …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes

For the petitioner: Mr. Bhupinder Gupta, Sr. Advocate with Mr. Lovnesh Kanwar, Advocate.

For respondent No.1: Mr. Ashok Chaudhary, Addl. A.G.

For respondent No.2: Mr. N. K. Thakur, Advocate with Mr. Jagdish Thakur, Advocate.

Sanjay Karol, J.

Petitioner has assailed the order dated 24.6.2005 passed by the Financial Commissioner (Appeals) in the present writ petition.

Brief facts giving rise to the filing of the present writ petition are as under:-

Petitioner and respondent No.2 are close relatives. Respondent No.2 is the aunt (Bua) of the petitioner and is issueless. In terms of agreement dated 1.4.1991, respondent

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

No.2 (hereinafter referred to as 'the Aunt') created a tenancy of her agricultural land comprising khasra No. 2236/2171 measuring 0-01-34 hectare and khasra No.2237/2171 measuring 0-02-81 hectare (total land 0-04-15 hectare = 415 Sq.mtrs.) in Muhal Chhapanu, illaqua Kamlah, Sarkaghat, Distt. Mandi (hereinafter referred to as 'the suit land') in favour of the petitioner (hereinafter referred to as 'the nephew'). Petitioner was put in possession of the land and the rent (*galla batai*) was fixed as 1/4th share of the produce. According to the nephew, he is in cultivating possession of the same.

The aunt also owned another large parcel of land which was also under the tenancy of the nephew and with regard to he same she filed a civil suit against her nephew in the Court of Civil Judge, Sarkaghat, Mandi, which was ultimately compromised whereby she admitted him to be in possession of the same as non-occupancy tenant. As a part of the compromise, she was to get a sum of Rs.700/- for her livelihood in addition to one room to be used as her residence. Based on the said compromise, the suit was dismissed on 1.2.1995.

With regard to the suit land on. 2.3.1995, the nephew moved an application before the Land Reforms Officer, Sarkaghat, (hereinafter referred to as 'the LRO') for getting the status of his tenancy recorded on the terms of payment of 1/4th share of produce as rent, to which the aunt objected stating that there is a house comprising of two rooms therefore, it can not be

said that the land is cultivable. In view of the restriction against the transfer imposed in grant (nautor), the land could not be given in tenancy.

During the course of the inquiry, the LRO examined the parties on oath and on 4.5.1995, the nephew's statement was recorded as under:-

> "Stated that I know the land in question. This is in my possession. Now-a-days, I have cultivated crop on this land. I am in possession of the land for the last 25 years. I am giving 1/4th share of produce to Smt. Twarsi."

Statement of the witness of the tenancy agreement dated 1.4.1991 was also recorded to corroborate the aforesaid statement of the petitioner. Importantly, on 5.6.1995 the aunt's statement was also recorded as under:-

> "Stated that I know the land in question. I have given this land to Shri Surat Singh as Gala Batai Vihisa Chaharam for cultivation. I am unable to work. The land in question is in the possession of Surat Singh. This statement of mine is true."

Her statement was further corroborated by the local residents who in one voice have also stated that the nephew has been cultivating the land in question for the last 24 - 25 years.

Importantly, during the course of the inquiry, after personal inspection of the spot, report was also submitted by the LRO to the effect that the petitioner was in cultivating and continuous possession of the suit land for the last 20-25 years

and the aunt has been taking rent of 1/4th share of produce from Shri Surat Singh i.e. the nephew. He favoured the application to be allowed.

Based on the statements of the parties as also the material on record, the LRO, Sarkaghat, Distt. Mandi on 22.11.1997 ordered that the name of the petitioner be entered as non-occupancy tenant in the revenue record. An appeal filed by the aunt assailing the said order was also dismissed by the Addl. Commissioner (Appeals) vide his order dated 24.8.2001. He held that the parties had consented to the passing of the order, which was passed after affording ample opportunities and after recording statements of the parties.

The aunt assailed the orders dated 22.11.1997 passed by the LRO, Sarkaghat, and orders dated 27.12.1999 & 24.8.2001 passed by the Collector, Mandi and Addl. Commissioner (Appeals) respectively, which were set aside by the Financial Commissioner vide his order dated 24.6.2005, and is now the subject-matter of challenge in the present writ petition.

The Financial Commissioner (Appeals) passed the order holding that ;

(i) The delay in production of the tenancy agreement dated 1.4.1991 itself raised a suspicion about the implementation of the same;

(ii) The statement of respondent No.2 recorded on 5.6.1995, looses significance in view of the subsequent investigation carried out by the Field Agency pursuant to the directions of the LRO. The dispute did not end as the aunt continued to contest the case;

(iii) Khasra Girdawari filed by the aunt on 20.12.1996 showing the existence of the house on the land was ignored by the authorities below;

(iv) The jamabandi for the year 1991-92 recorded that the land could not be alienated for 15 years.

Learned counsel for the petitioner has assailed the order on the ground that the concurrent findings of fact recorded by the authorities below, based on the admission of respondent No.2 ought not to have been reversed and that too without any basis and in a perfunctory manner. There was material evidence showing the status of relationship between the parties creating a valuable right in favour of the petitioner. The opposition of the claim is at the behest of 3rd party.

Learned counsel for the respondents has defended the order reiterating the findings so recoded therein.

From the material on record, it is clear that the agreement dated 1.4.1991 creating tenancy was not assailed by respondent No.2 in civil suit filed before the Civil Court on 26.10.1991. The said suit was compromised and the same stands accepted by the parties. Further, the parties statements

recorded by the Land Reforms Officer as also the report submitted by the Officer have not been assailed by anyone at any point in time. As noticed earlier, the suit land is just about 415 sq.mtrs. and is much less than the land in respect of which the parties had compromised. There is no material to suggest as to why the parties would not have compromised the matter with regard to smaller parcel of land and that too for creation of tenancy only. Importantly, there is no challenge by the respondent No.2 to the procedure which was adopted by the Revenue Officer in allowing the petitioner's application for mutation.

In the State of Himachal Pradesh, the matters pertaining to the creation and maintenance of rights between the parties are governed by the provisions of the Land Reforms Act. From time to time the Government has issued instructions which are compiled as the H.P. Land Records Manual.

Applying the principles of law laid down in ***Chanda*** v. ***Ram Chander*** (1980 PLJ 561), no presumption of truth can be attached to Khasra Girwdawaries unlike that all entries made in jamabandi as provided for u/s 32 of the Land Revenue Act. Preparation of revenue record, in the State of Himachal Pradesh is governed by the provisions of the Himachal Pradesh Land Revenue Act, 1954 and also various instructions issued by the Government from time to time. Chapter 4 and Section 32 deals with the record of rights. Periodical revision of records is carried

out and the record of rights i.e. jamabandi, creates a rebuttable presumption of truth. Khasra Girdawari (record of harvest inspection) is prepared as per Chapter 9 of the H.P. Land Records Manual. The purpose of Khasra Girdawari is to collect true information regarding the crops harvested in *Kharif* as well as in *Rabi* season and to record any change in the ownership or possession over the land at the time of Khasra Girdawari by the Patwari which is done after every six months. For recording change in the Khasra Girdawari, the State Government has issued instructions from time to time and vide instructions dated 28.4.1980, it is clarified that all changes are to be recorded by the Patwari in pencil and the same is to be notified to the Tehsildar or Naib Tehsildar in writing. Thereafter the said Revenue Officer, after affording due opportunity and making inquiry from the concerned persons and based on the said decision, the Khasra Girdawri would be modified/corrected/ accepted.

In ***Harbans Singh and others*** v. ***Karam Chand and another*** (1991(2) Shim.L.C. 222), this Court held as under:-

> "It is well settled that where the earlier revenue entries were changed in the later revenue entries and the change was effected without any mutation and there was no order of the Revenue Authorities showing how the change was made, although the presumption ordinarily would be in favour of the later entries, yet that presumption is rebuttable one and it would be

deemed to have been rebutted by the fact that the alterations in the later entries are found to have been made unauthorisedly or mistakenly, there being no material to justify the change of entries. This is what has been found to have been done in the instant case while the entries recording the plaintiffs to be the owners in possession of the suit land have been recorded in the later Khasra Girdawari. In fact, the Financial Commissioner has prescribed the mode for effecting changes in the existing Khasra Girdawaries. According to the instructions, it is the duty of the Patwari before making any change in the existing entry at the time of harvest inspection, to notify in writing the person or persons likely to be adversely effected by such a change of the entries and retain on record proof of the notifications. Further, the changes so made, should be attested by the Lumberdar or the Panch of the village. It is further stated in the instructions that entries made in violation of the said instructions shall be treated null and void at the time of attestation of the Jamabandi or at any earlier stage."

In ***Kanshi Ram*** v. ***Harbhajan Singh Bhajji*** (2002(2) Shim.L.J. 1274), it has been held that in the absence of any legal orders from either the Revenue or Civil Court, no presumption of truth could be attached to the revenue entries and relied upon the following observations of the Apex Court in 1969 P.L.J. 105 (***Durga*** v. ***Milkhi Ram***):-

"….Where the earlier revenue entries were changed in the later revenue entries and the change was effected without any mutation and there was no order of the revenue authorities showing how the change was held,

> although the presumption (under Section 44 of the Punjab Land Revenue Act) would be in favour of the later entries but that presumption was a rebuttable one and it would stand rebutted by the fact that the alteration in the later entries was made unauthorisdely or mistakenly, there being no material to justify the change of entries……..”

In ***Tarlok Singh*** v. ***Harnam Singh and another*** (1974 PLJ 396), the Court has held that no presumption of truth is attached to the entries in Khasra Girdawaries and where there is a direct conflict in the entries between Khasra Girdawaries and the jamabandies and the concerned Patwari involved in the preparation of the Khasra Girdawari is not produced, the entries in jambandies falsify the entries in Khasra Girdawaries.

Instruction 9.9(g) of the Manual provides that the Revenue Officer cannot make any entry of tenancy in the revenue records except by way of mutation under Rule 10-A of H.P. Tenancy and Land Reforms Rules, 1975. This explains the delay attributable to the petitioner. This necessitated the petitioner to move an application for carrying out necessary mutation inspite of the fact that the parties had compromised the civil suit putting an end to all disputes inter se between the parties. This also clarifies as to why the petitioner’s claim was not recorded to be in cultivating possession of the suit land after the creation of the tenancy. It has come on record that the mutation was finally effected vide entry No. 250, dated 11.3.1999.

Further, a bare reading of Section 2 sub Section (7) of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as 'the Act') would show that the land in question even with the two rooms constructed thereupon could have been let out by respondent No.2 to the petitioner. There is no bar in law in creation of the tenancy by the parties.

Learned counsel for respondent No.2 has further submitted that Section 104(8-A) of the Act creates a bar and no tenancy could have been created at all. To my mind, submission is totally untenable in law. It deals with a totally different situation. By virtue of Section 104, the tenant can acquire interest of a land owner. In the present case, the petitioner is not enforcing any statutory rights under the provisions of the Act. The contractual obligation, enforceable in law, cannot be defeated by resorting to and taking a shelter of the provisions of Section 104(8-A), which are totally inapplicable.

Applying the principles of law, the jamabandi prepared by the Patwari appears to be true and correct reflection of the position of record as the same stands corroborated by the conduct of the parties. As noticed earlier, there is a consent of respondent No.2; an independent inquiry conducted by the Revenue Officer and the compromise between the parties in a civil suit all lead to an irresistible conclusion that the preparation of the record as filed by the respondents is untrue. Also the Jamabandi pertaining to the land covered by the civil suit reflects

the fact that house existed on the same. Even the compromise records that respondent No.2 shall be entitled to use one room during her lifetime. It is not the case of respondent No.2 that she had two houses. Therefore, preparation of the record of khasra girdawari and the stand taken by respondent No.2 is not true and correct.

That respondent No.2 is pursuing the cause of a 3rd party is not being considered by me and the same is left open. Since the petitioner filed an application for mutation only in the year 1995 after the civil suit was compromised, therefore, it cannot be said that there was any concealment with regard to the agreement.

With the recording the statements of the parties, the Land Reforms Officer, in order to comply with the procedure had got the factual position ascertained from the Field Agency. Simply because this was done, it cannot be said that the consent of respondent No.2 stood diluted or could be ignored to the detriment of the petitioner. There is nothing on record to show the exact date of grant made in favour of respondent No.2, restricting the transfer upto a period of 15 years from the date of litigation. Not much credence can be given to the revenue record placed on record by respondent No.2, therefore, it cannot be said that there was any restriction in creation of tenancy.

In my view, the order passed by the Financial Commissioner (Appeals) is perverse, contrary to records and needs to be set aside.

For all the aforesaid reasons, the present writ petition is allowed. The order dated 24.6.2005 passed by the Financial Commissioner (Appeals) is set aside and those passed by the Land Reforms Officer, Sarkaghat dated 22.11.1997, the Collector, Mandi dated 27.12.1999 and the Additional Commissioner (Appeals) dated 24.8.2001, are restored.

(Sanjay Karol),
Judge.

October 24, 2007.
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